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AMERICAN GOVERNMENT AND POLITICS

THE FIRST (SPECIAL) SESSION OF THE SIXTY-SEVENTH CONGRESS
APRIL 11, 1921—NOVEMBER 23, 1921*

LINDSAY ROGERS

Columbia University

The New Administration. Beginning on March 4, 1921, the Republican party, for the first time in ten years, was in complete control of the executive and both branches of Congress. Entirely apart from the issues of party politics, its régime promised to be interesting. Campaign pledges had been made that legislation would be speedily passed relieving the country of the ill effects of what President Harding called "war's involvements;" economy and efficiency were to be secured; more business in government and less government in business were among the promises, and the reorganization of the administration, long talked of, was to be achieved. There were, moreover, two significant possibilities from the standpoint of party government. During the campaign, Mr. Harding said that "government is a simple thing," and that, if he was elected President, Congress would be allowed to play its proper part under the Constitution. He pledged the Republicans to inaugurate "party government, as distinguished from personal government, individual, dictatorial, autocratic, or whatnot." This was a pledge not to follow Mr. Wilson's example and coerce, or even lead, Congress; and the interesting question was, whether Congress would not be helpless without executive direction; whether legislative inefficiency is not the price that must be paid for the absence of some executive autocracy. In the second place, remembering the circumstances of President Harding's nomination and the different Republican elements which came together during the campaign, one was justified in wondering whether the party would continue to present a solid front in its congressional work; whether there would not be a split between progressives and reactionaries resembling that of 1910-1912. The congressional session gave answers to both of these questions: there were unmistakable signs that President Harding regretted his self-denying

* For previous notes on the work of Congress, see *American Political Science Review*, Vol. 13, p. 251, Vol. 14, pp. 74, 659, Vol. 15, p. 366.

ordinance and realized that he should—on occasion he even tried to—lead Congress, and there developed a powerful revolt by members representing the agricultural sections of the country against the more conservative leadership of the party.

The House of Representatives elected Representative Gillett of Massachusetts as Speaker by a majority of 176 votes (Representative Kitchen receiving 122 votes) and adopted without change the rules of the Sixty-sixth Congress. It is worthy of note that the Republican majority in the House is so great that the two-thirds vote necessary to suspend the rules can be secured from the party following, and thus this safeguard of the rights of the minority is temporarily in abeyance.¹ In their committee assignments the Republicans adhered to the caucus rule of not putting the same member on more than one of the so-called "exclusive committees," the ten most important ones, but the rule was relaxed in two instances for the minority.² In the Senate the only noteworthy feature of the organization was the filibuster by the Democrats against the change that the Republicans proposed in the rules as to committees. With 14 new Republican members there were not enough vacancies to give each of them a place on an important committee, so it was sought to increase the membership of these committees from 15 to 16. There would thus be 10 Republicans on each committee, and the disparity between the majority and minority would be increased. Senator Brandegee gave notice of his proposed amendment to the rule on April 12, but the Republican majority was not able to force action until April 18. Another, and not unimportant reason for the proposed change, was that the Republican leaders wished to be sure of controlling their committees and not to suffer defeats by reason of the absence of regular Republicans and the combination of a progressive or so with the Democrats. The rule is still adhered to that a Senator cannot be a member of more than two of the "exclusive committees."³

¹ See Representative Pou's remarks, *Congressional Record*, April 11, p. 10.

² For a similar agreement in the Senate, see *American Political Science Review*, Vol. 14, p. 75. The House procedure was discussed on April 18, and the debate contains some interesting information about the control of the majority over minority committee assignments.

³ See *American Political Science Review*, Vol. 14, p. 75. In the debate on the Republican proposal, Senator Williams quoted a Latin verse, now a very rare occurrence in the Senate, and Senator Brandegee, with great frankness, described the majority's intentions in a parody of Kipling's "Recessional" (*Congressional Record*, April 18, p. 340):

"The tumult and the shouting dies,
The captain and the kings depart,
And the steam roller is about to start."

The Legislative Record. As is always the case, private and local legislation occupied a major portion of the time of Congress. The session covered more than 150 working days, with a recess from August 24 to September 11,⁴ after which, for several weeks, the House was without a quorum and made no attempt to transact any important business. It was far ahead of the Senate and could afford to mark time. The House was actually in session 139 days. One hundred and fifty bills and resolutions were passed, and 130 went through the House but were not considered by the Senate; so Representative Mondell, the Republican floor leader, could say that the House had made a record of an average of two bills or resolutions a day.⁵ During the session, 9775 bills and resolutions were introduced into the House, but only 415 were considered by committees and reported. The Senate was confronted by 3103 bills and resolutions. Senate committees made 320 reports.

Tariff and Taxes. Congress was called together primarily to consider the tariff and the revision of the tax laws. The Emergency Tariff Act was passed, with some of its provisions changed from the form in which it was vetoed by President Wilson. The Tax Revision Law went through the House in four days and was considered by the Senate for six weeks, and as passed it satisfied no one. Senator Penrose, its chief author, called it "a temporary or transitional measure." A permanent tariff bill was passed in the House but failed of consideration in the Senate. Midway in the session, the administration determined that the tariff was such a difficult question and economic conditions in Europe and the United States were so unsettled, that it might be better to wait. Postmaster general Hays put the idea out in a speech and when the response from the country was favorable, action was postponed. There was much doubt particularly about the so-called "American valuation plan;" but even if the administration had been firm in insisting on its program, the measure could not have been considered

⁴ The Senate leaders (both of the majority and minority) proposed a recess from July 7 to July 28, but their concurrent resolution was beaten (27-24) by the agricultural "bloc," which desired legislation for the relief of the farmers (amendments to the Federal Farm Loan Banks, the grain futures bill, etc.). See *Congressional Record*, July 5, p. 3501.

⁵ "Private members, like governments, have all got legislation on the brain and think that the primary business of Parliament is to legislate, whereas in fact it is to look after the administration of existing laws so well that no new laws or very few are necessary." "A Student of Politics" (said to be Herbert Sidebotham) in the *London Times*, April 17, 1920; quoted, with some excellent remarks, by C. Delisle Burns, in *Government and Industry*, p. 61 (London, 1921).

by the Senate, for, as has been said, 130 bills and resolutions sent over by the House failed of passage. Even such an important matter as the Newberry case had to be postponed until the regular session.⁶

Appropriations. Even though this was a special session of Congress, several appropriation bills were necessary. The navy bill was not passed by the Senate at the short session, and the army bill failed under a pocket veto, President Wilson not believing that provision was made for a sufficient military force. The naval appropriation bill was passed with the Borah disarmament amendment attached and the appropriations somewhat scaled down by the insistence of the House, and the army bill limited the army to 150,000 men.⁷ A deficiency bill for 1921 was necessary (H. R. 6300); appropriations were made for expenses incident to the first session of the Sixty-seventh Congress (H. R. 3707); the shipping board was given \$48,000,000; and \$4,000,000 more was allotted for carrying to completion the Alaskan railroad. Under the rules of the House, passed in anticipation of the Budget Act, which also became law, a single committee was responsible for appropriations.⁸ The House also passed a deficiency bill for 1922 that was not considered by the Senate.

⁶ The Senate committee on privileges and elections reported to the Senate (September 29) on the Ford-Newberry contest, and the resolution to dismiss Ford's petition was debated at intervals until the adjournment.

⁷ An interesting question was raised when President Harding, in signing the bill, wrote to Congress that the normal expiration of enlistments would probably approximate one-half the reduction that Congress had ordered. But, he added, "I would not feel justified in asking the Secretary of War to enforce the dismissal of men who have enlisted for a definite term of service. There seems to be a moral obligation involved, the violation of which would be demoralizing to the spirit of the army itself." The letter continued: "If a probable deficit develops in a just procedure to reduce our enlisted forces, I will report to the Congress at the earliest possible day." The act expressly provided that no deficit should be created. In this connection it is interesting to recall the statement made by President Wilson when he signed the Sundry Civil Appropriation Act of 1913, which provided that the funds appropriated for the enforcement of the anti-trust laws should not be used for the prosecution of agricultural associations or trade unions. In a memorandum made at the time of signature, Mr. Wilson said: "I can assure the country that this item will neither limit nor in any way embarrass the actions of the Department of Justice. Other appropriations supply the Department with abundant funds to enforce the law." The President said that if he had had the power to veto items in appropriation bills, this exemption would have gone out. See George Harvey, "Six Months of Wilson," *North American Review*, November, 1913 and *American Year Book 1913*, p. 24.

⁸ See *American Political Science Review*, Vol. 14, p. 670.

Other legislation. Congress provided for amendments to the Volstead Act (with particular reference to beer); grants-in-aid to the states for road construction to the extent of \$90,000,000; and for the protection of maternity and infancy to the extent of \$1,500,000 for the current year, with the possibility of increases; the restriction of immigration; further assistance for the farm loan board; and amendments to the Edge Export Act. Laws were also passed forbidding gambling in grain futures and regulating the packers. The latter statute divests the federal trade commission of some of its authority and gives it to the secretary of agriculture. In the form in which it passed, it was not objected to very seriously by the packers; indeed, the charge was made in the Senate debate that the bill had been written by the packers, and its value as legislation will not be determined until there is opportunity to see its effects. The other laws are either of private, local, or very minor importance, and are not worth listing.

The House passed several important bills that were not considered by the Senate. The tariff bill has already been mentioned. In addition, the House passed a bill providing for the funding of government obligations to the railroads (there was a special message from President Harding urging immediate action on this but it was not taken up in the Senate), and a bill providing for a foreign debt refunding commission.

The Bonus. While no provision was made for a bonus, or "adjusted compensation" as the proponents of the legislation call it, ex-soldiers were cared for by the so-called Sweet Law. It consolidates into one veterans' bureau, the bureau of war risk insurance, the rehabilitation division of the federal board for vocational education, and the part of the public health service concerned with ex-soldiers. Regional offices throughout the country are provided for.

Several attempts were made to get congressional action on the larger question of "adjusted compensation."⁹ The Senate committee reported a measure (June 20), and its consideration seemed likely until President Harding appeared before the Senate (July 12) and requested it to delay action. The bill was immediately abandoned.¹⁰ Later, in the

⁹ The House of Representatives passed a bill on May 29, 1920, although it was not intended that it should become law in that form. It was certain that the Senate would not consider it and it seemed wise to take some action before the presidential campaign. See *American Political Science Review*, Vol. 15, p. 79. The Senate committee also reported a bill in February, 1921, but it was not considered.

¹⁰ On August 20, Representative Cockran sought to secure consideration by the House of a resolution appointing a committee of nine members "to consider

House of Representatives, Representative Fish sought to amend the Fordney foreign loan bill by providing that interest payments on the loans be used for a cash bonus for ex-service men. The amendment went out on a point of order, but the Republican leaders promised that in the next session of the Congress legislation would be put through. In the Senate, amendments were offered to the Tax Revision Law retaining the excess profits taxes for bonus purposes, but they were defeated.¹¹

The President and Congress. President Harding's intention, announced in his campaign, was to be a "constitutional executive," and he apparently had no desire to interpret this according to Mr. Dooley's definition of "a constitootional ixicutive" as being "a ruler that does as he dam pleases an' blames th' people." The President was to announce a party program and give Congress his advice, but in no case was he to try to impose his will on that of the legislature. This attitude was doubtless in part responsible for the failure of Congress to function more efficiently, although, in view of the marked discontent with legislative bodies everywhere, it may be suggested that, comparatively, the record of Congress was not so bad. During the session the Washington correspondents sent up several kites to enable the President to ascertain whether public opinion would approve a more vigorous attitude; but apparently the popular mandate did not seem sufficiently definite to warrant him in increasing by one the campaign pledges that had been forgotten. On occasion, however, the President did let Congress know his opinions, but such occasional half-hearted intervention was not very successful.

There were no differences between the executive and legislature that resulted in vetoes, but that, probably, was due to the failure of Congress

what measures should be taken to vindicate the rights and privileges which have been violated and invaded by this action of the President of addressing a communication respecting legislation to the Senate, and not to the Congress, as required by the Constitution." The resolution was laid on the table. *Congressional Record*, p. 5788. In September, 1918, President Wilson appeared before the Senate and urged the passage of the then pending Woman's Suffrage Amendment, describing it "as a vitally necessary war measure," and "as vital to the right solution of the great problems which we must settle immediately when the war is over." The House had approved the amendment in January, 1918. See *American Political Science Review*, Vol. 14, p. 80. Mr. Wilson also delivered an address on the essentials of permanent peace to the Senate (January 22, 1917) "as the council associated with me in the final determination of our international obligations." See Scott, *President Wilson's Foreign Policy*, p. 245.

¹¹ *Ibid.*, October 29, p. 7798.

to do more and the desire of the President to avoid an open break, rather than to any meeting of minds. The President, for example, was beaten decisively on the question of surtaxes. He sent a letter to Representative Fordney asking a compromise of 40 per cent, but the House, even with a Republican majority of two-thirds, ignored his wishes. The House committee refused to accept Secretary Mellen's tax proposals, even though they had President Harding's approval; and Secretary Mellen's foreign debt refunding bill was materially modified before it passed the House on October 24. Even with a commission, instead of the uncontrolled authority of the secretary of the treasury which the administration proposed, the House accepted the measure with unfeigned reluctance. The President's attitude on the bonus was courageous, but here Congress was only too ready to shift responsibility to the executive and postpone the evil day of decisive action.

In one respect, President Harding took a very interesting attitude, which, if exercised frequently and on important matters, might be more "unconstitutional" than leadership of the Roosevelt or Wilson kind. I refer to the fact that, in some cases, he seemed to play the House of Representatives, which he could control, against the Senate which he could not. Thus, the emergency peace resolution was held up in the House in accordance with the President's wishes and was finally passed in the form that he desired.¹² On disarmament, he was not so successful in having his way. The Borah resolution, authorizing and requesting the President to invite Great Britain and Japan to a naval conference, was added to the naval appropriation bill by a unanimous vote in the Senate. The phraseology seemed to the President to be too definite, to give the Congress the initiative, if a conference was held.¹³ No

¹² The resolution was dated July 2, 1921, but the formal proclamation of peace was not made until after the ratification of the peace treaties. It was issued on November 14, but was dated back to July 2.

¹³ Before the session began, it was predicted in some quarters not far removed from the capitol, that the real control of foreign policy would be vested in the Senate, which, incidentally, was not enthusiastic over the appointment of Mr. Hughes as secretary of state. There was slight, if any, fulfillment of this prediction. The Senate ratified the treaty with Colombia, at the request of the administration and with remarkable promptness. (It was held over from the special session of the Senate, March 4-14, to approve appointments, and was taken up in the special session of Congress.) Mr. Wilson's much decried idealism was translated into interests, and Senators who voted against righting a wrong were in favor of ratifying to secure oil and harbor privileges. Some other unimportant treaties were ratified: the treaties with Germany and Austria went

attempt was made to have the Borah resolution defeated in the Senate, but when the measure was sent to conference, the House leaders refused to allow the House to express an opinion on this Senate amendment,¹⁴ and the House foreign affairs committee reported a joint resolution, expressing "full concurrence in the declaration of the President 'that we are ready to coöperate with other nations to approximate disarmament'." It was not the intention that the resolution should be passed, but it was simply in the nature of an instruction to the conferees as to a possible modification of the Borah amendment. The sentiment in the House in favor of the Borah provision, however, was so strong that when the conference report was made, the House was given a straight-out vote. Mr. Mondell read a letter from President Harding saying that "it is not of particular concern to the administration what form the expression of Congress shall take," and so the Borah resolution was adopted with only four dissenting votes.

On the question of free tolls for American vessels passing through the Panama Canal, it was reported that President Harding was anxious to have action postponed until after the disarmament conference. But before the recess, the Senate had reached a unanimous consent agreement to vote on the Borah bill on October 10, and the bill was passed. The administration had little difficulty, however, in seeing that the bill was not brought up in the House.

The Agricultural "Bloc." One of the most interesting developments of the session was the power and activity of the so-called agricultural "bloc." This is simply a group of senators and representatives who decided to act together in matters affecting the farmer, to force concessions from the Republican leaders as the price of their support of the party, and to act as a unit in putting on the statute books measures of importance to the agricultural interests which the party leaders desired to delay or hesitated to sponsor. In the Senate 22 members, mostly from western states, can be listed as the minimum of the agricultural "bloc," but its proportions have on occasion grown to 55—28 Republicans and 27 Democrats. In the House there are about 100

through as proposed by the administration, and while President Harding was very tactful in appointing Senators Lodge and Underwood to his disarmament commission, the initiative here has been Secretary Hughes' and not the Senate's. One interesting incident of the relation of the President and Congress with regard to foreign affairs, was the failure of Mr. Harding to reverse President Wilson's action in refusing to carry out the provisions of the Jones Shipping Law. See *American Political Science Review*, Vol. 14, p. 670.

¹⁴ See *Congressional Record*, June 3, P. 2090 and June 7, pp. 2234 ff.

members. Their most spectacular action was to agree with the Senate surtax amendment over President Harding's objecting letter.

The influence of the "bloc" in the Senate was shown by the Emergency Tariff Act, the law regulating the packers, the provisions of a billion dollars credit for farm exports, the regulation of grain exchanges dealing in futures, the Curtis bill appropriating \$25,000,000 as a revolving fund for farm loan banks, and the Kenyon bill, providing an increased rate of interest for farm loan bank bonds, without an increase of interest rates to the farmers. On the tax revision bill, the agricultural "bloc" gave the Senate leaders notice that certain changes would have to be made, and they were made. The surtax of 50 per cent on incomes, the repeal of the transportation taxes, and the increase of estate taxes, are schedules on which they forced concessions. Much was said, of course, of "class legislation," of the breakdown of party government, and no doubt was left as to the attitude of the administration. It may be suggested, however, that for the Republican leaders to declaim against the agricultural "bloc" is a case of the pot calling the kettle black, with the exception that the pot has been camouflaged, while the kettle glories in its inky expansiveness. Only the future can determine whether the activities of the group will be a flash in the pan or whether they will have a profound effect on party organization and congressional leadership.

Notes on Procedure. The session showed once more how the lack of restrictions on debate in the Senate delays legislation and how the extreme control which the House leaders exert can be used to prevent deliberation and force immediate action. The House passed 130 bills and resolutions that were not considered in the Senate, so much time did this body devote to the tariff and taxation, although it should be said that the Senate was concerned with the treaty with Colombia and the treaties of peace. As usual there was some discussion of the necessity for cloture, but the existing rule was not invoked; unanimous-consent agreements for a vote at a particular time sufficed in every case, and as usual there was only discussion with no action. Senator Harrison proposed changes in the rules providing that in the future there should be open executive sessions of the Senate to consider presidential nominations and treaties, but his resolution was defeated by reference to the committee on rules.¹⁵

¹⁵ See *Congressional Record*, May 9, p. 1114, and May 14, p. 1429. On July 7, following the resignation of Mr. Wolcott, the senior senator from Delaware, Senator Walsh raised the question of whether a quorum of the Senate consisted

As usual, also, both the Senate and the House of Representatives lost a great deal of time in securing quorums and in having the roll called. In the Senate a quorum was called for 348 times, an average of more than twice a day, and there were 187 record votes. In the House members did not make the point of order as frequently as has been the case in past sessions, and the roll was called only 48 times.¹⁶ There were 133 yea and nay votes. Nevertheless, the Senate and the House each spent about 16 days of the session in having the roll called.

In the debate in the House on the tax revision bill, Representative Cockran said that the House had fallen to the level of the electoral college. That was a slight overstatement, for the electoral colleges vote in silence, and members of the House make speeches, or, under leave to print, publish in the *Record* imaginary contributions to the debates. It is true, nevertheless, that on some of the biggest issues that come before Congress, the House, like the electoral colleges, is deprived of all discretion. It is limited by its leaders to a "yes" or "no" vote on the proposals that they make.

The House, for example, voted to terminate the state of war, but was not allowed to amend the emergency peace resolution, and the resolution as reported, was different from the one that, at the previous session, the House had been forced to accept without amendment.¹⁷ The House passed the Emergency Tariff Act in the form in which it was vetoed by President Wilson. This, Representative Fordney said, was the "instruction" of the Senate finance committee. "If we send the bill back just as it was vetoed by President Wilson, they will pass it, but we must make no change in it. If we add anything or take anything out, they will not give it consideration." The House (according to the *Record*) showed a curious sense of humor and greeted this statement with "laughter." Further reflection, however, changed the senatorial mind. The bill was passed by the House the day after it was reported, but it did not go through the Senate until a month later and then was considerably amended.

While the Senate was not so openly exacting on the tax revision law, so far as the influence of the House was concerned, the result was

of 48 or 49. The discussion seemed to indicate that although the practice of the Senate adopted the former number, a strict interpretation of the constitutional provision would require the latter number. See *Congr. Record*, p. 3633.

¹⁶ It was pointed out that during the Sixty-sixth Congress the House of Representatives lost time equivalent to ten working days in having the roll called on points of no quorum that were made by a single representative.

¹⁷ See *American Political Science Review*, Vol. 15, p. 81.

substantially the same. The Senate added 833 amendments and yielded to the House on only 7 of them. The procedure in the House was just as effective a gag as the Senate's insistence that the emergency tariff bill must be passed unchanged. On its face, the rule for the consideration of the tax bill was an extremely liberal one. Two days of general debate were allowed, and then the bill was to be considered for amendment under the five minute rule; but, "committee amendments to any part of the bill shall be in order at any time and shall take precedence of other amendments." When the two days allowed for amendment elapsed, there was no time left for the individual member to propose changes. The hour fixed for a vote arrived and the House had but a single opportunity to express an opinion on a schedule. This was afforded by the Democratic's leader's motion to recommit to the ways and means committee. In the Senate there were nearly a hundred roll calls; in the House, which under the Constitution has the greater responsibility, there was a single roll call on what should go into the bill.¹⁸

In the discussion of the bill for reapportionment of representatives, which was returned by the House to the committee, a good deal was said about the decline of the House of Representatives in the opinion of the country and its subordinate position in comparison with the Senate. At the previous congressional session, the House had passed a reapportionment bill which would have kept the number of representatives as at present—435. The bill was not considered in the Senate,¹⁹ and in the debate on the second bill it was said that the reason for the failure of the Senate to act was that the Senate desired to see the

¹⁸ There was a roll call later on the question of whether the Senate 50 per cent surtax amendment should be agreed to.

Attention should also be called to the fact that the House passed two important bills under suspension of rules. The rural posts roads bill, providing for assistance to the states in road construction was passed under suspension of rules with the House not allowed to propose amendments, and the same day (June 27) the leaders put through the anti-beer bill. This was intended to overturn the attorney-general's ruling and was an emergency measure, introduced by the chairman of the rules committee himself, because he thought that the Volstead supplemental act had too many details and covered too many subjects to throw it open in the House at that time for debate, amendment and vote. On this occasion, however, by unanimous consent, debate continued for four hours instead of the customary forty minutes. It was said in defense of such a procedure that, thus limited as to its action, the House would deliberate "in a much more dignified manner."

¹⁹ See *American Political Science Review*, Vol. 15, p. 370.

numbers of the House increased; that if the proposal then pending, to increase the number to 460 were adopted, there would be no objection from the Senate. The upper chamber, it was said, believes that its own strength will be increased by a more numerous House of Representatives, for the more unwieldy the House becomes, the more willing its leaders will be to resort to an extreme form of guillotine and force formal votes of approval of their proposals. The House would continue to be vociferous, but would be weak, for the Senate could deal much more effectively with the masters of a shackled chamber than with the agents of a deliberative assembly. This interpretation of the Senate's attitude on reapportionment may not have been authoritative, but it at least had the earmarks of reasonableness, and, considered in connection with present day procedure in the House, sheds some light on the operation of the bicameral theory in the congressional system.²⁰

²⁰ Attention should be called, however, to the fact that the change in the House rules requiring matters added to bills in the Senate which would have been subject to points of order if originally proposed in the House, to be brought in by the House conferees for separate votes, again resulted in the House being able to have its way as against the Senate. This was particularly true with regard to the naval appropriation bill. The House forced substantial reductions. In the discussion of the conference report on the naval bill in the Senate, there are some very plaintive references to the effects of this House rule. Reference should also be made to the Senate debate on November 23 on the conference report on the tax revision bill. This contains a very valuable discussion of the powers of conference committees.